



Produce Marketing Association

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To: USDA AMS, Dexter.Thomas@usda.gov

Re: Docket No. FV05-373

The Produce Marketing Association (PMA) is pleased to submit these comments to the U.S. Department of Agriculture about electronic data interchange (EDI) and trust protection under the Perishable Agricultural Commodities Act.

PMA is the largest global not-for-profit trade association representing companies that market fresh fruits and vegetables. Our 2,400 members range from grower-shippers and supermarket retailers, to hotel and restaurant chains and overseas importers. Within the United States, PMA members handle more than 90% of fresh produce sold at the consumer level.

PMA's purpose is to sustain and enhance an environment that advances the marketing of produce and related products and services. The association is funded primarily by members' dues, revenues from exhibits, product sales, and meeting registrations.

Like USDA, PMA and its members are committed to fair and efficient trading practices and we appreciate the opportunity to help USDA in this endeavor. PMA is also committed to distribution efficiencies and optimal use of technology to enhance the relationships between buyer and seller and drive costs out of the distribution system.

As noted in the advanced notice of proposed rulemaking, the PACA law imposes a statutory trust on perishable agricultural commodities received and accepted but not yet paid for, products derived from those commodities, and any receivables or proceeds due from the sale of those commodities or products for the benefit of unpaid suppliers or sellers. "Because of the statutory trust provision, PACA trust creditors who have preserved their trust rights, including sellers outside of the United States, have a far greater chance of recovering the money owed them when an entity subject to PACA goes out of business," the notice states. "The PACA trust provisions protect producers and all other firms trading in fruits and vegetables as each buyer of perishable agricultural commodities in the marketing chain becomes a seller in its own turn."

Under current regulations, PACA-licensed unpaid sellers or suppliers may provide notice to buyers of their intention to preserve their trust rights by including the following language on their billing or invoicing statements, whether paper or electronic (including EDI): "The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities

Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.”

PMA believes PACA trust and the protections it affords the fresh produce industry are an important safeguard for sellers and a key component of the overall fresh produce trading system in the United States. Changes in technology, now and in the future, must not jeopardize the trust, and use of the trust must be adaptable to those changing technologies. No technology should impair the trust or change the way buyers and sellers use the trust. Technologies must enable sellers to notify buyers of trust benefits preservation, and they must do so in such a way that sellers can comply fully, including being able to show that they have filed a notice to preserve trust rights with the buyers.

As the industry continues to drive costs out of the distribution system through efficiencies such as data technology improvements, issues surrounding the trust should not interfere. Sellers should not have to submit paper copies of trust preservation statements to buyers when the rest of their transactions with buyers are handled electronically. Buyers should not be burdened with handling paper copies when their systems are set up to handle produce transactions electronically.

Specifically, PMA suggests that USDA create an option for a blanket trust benefit preservation notice between a seller and a buyer.

In the traditional EDI environment, companies typically have their own “Trading Partner Agreement,” or TPA, that is signed prior to exchanging EDI documents with one another. This TPA essentially takes care of the language found on various documents including invoices, purchase orders, advanced ship notices (e.g. Notice of Terms). Once this TPA had been signed, it was to be applicable to all subsequent EDI transactions sent to the trading partner that signed the TPA, thus reducing the cost of having to include this verbiage on each and every EDI transaction sent.

As most EDI transactional charges are based on the number of characters transmitted, including these trust statements could more than double the cost per transaction. If it were handled through a TPA, it would reduce the cost substantially.

PMA suggests that USDA determine whether a TPA can be considered binding under the PACA and applicable to all EDI transactions sent between trading partners that sign the TPA. If it can be considered binding, we encourage USDA to move swiftly to enable this cost-effective business practice and communicate this to industry.



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